

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
May 16, 2011

RE:

Legend

Date 1 =
Taxpayer =
Trust =

Date 2 =
x =
Company =
Accountant 1 =
Year 1 =
Year 2 =
Attorney =
Year 3 =
Accountant 2 =

Dear :

This letter responds to the letter dated November 8, 2010, submitted by your authorized representative, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) exemption with respect to a transfer to Trust.

FACTS

On Date 1, a date prior to December 31, 2000, Taxpayer created Trust, an irrevocable trust, for the benefit of his spouse and Taxpayer's descendants. On Date 2, Taxpayer transferred x shares of stock in Company to Trust. Trust has GST potential.

Taxpayer engaged Accountant 1 to prepare the Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for the transfer made on Date 2. Although Accountant 1 filed Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return, indicating that a Year 1 Form 709 was to be filed, the Year 1 Form 709 was not subsequently filed. Accordingly, Taxpayer's GST exemption was not allocated to Trust with respect to the Date 2 transfer.

Subsequently, in Year 2, Attorney prepared and filed the Year 1 Form 709, reporting the Date 2 transfer for gift tax purposes. Attorney, however, failed to allocate Taxpayer's available GST exemption with respect to the Date 2 transfer.

In Year 3, Accountant 2 recognized that Attorney had failed to allocate Taxpayer's available GST exemption to Trust. It has been determined that Taxpayer intended Trust to be exempt from GST tax. Accountant 2 prepared a Form 709 for Year 3 on which a late allocation of GST tax exemption was made to Trust.

The following rulings are requested: (1) an extension of time under § 2642(g) and § 301.9100-3 to allocate Taxpayer's GST exemption to the Date 2 transfer to Trust, and that the transferred property be valued as of the date of the Date 2 transfer pursuant to § 2642(b)(1); and (2) a ruling that the late allocation of Taxpayer's GST exemption is deemed void.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a "transferor" to a "skip person." A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2631(a), in effect for the Date 2 transfer, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Under section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations, an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio under § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph (g).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Under § 301.9100-3(b)(1)(v), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Taxpayer is granted an extension of time of 120 days from the date of this letter to make allocations of Taxpayer's available GST exemption with respect to the Date 2 transfer to Trust. The allocation will be effective as of the date of the transfer to the trust, and the gift tax value of the transfer to the trust will be used in determining the inclusion ratio with respect to the trust. The allocation should be made on a Supplemental Form 709 for the appropriate calendar year and filed with the Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Supplemental Form 709.

Because the allocation will be effective as of Date 2, the allocation will be deemed to precede in time the allocation Taxpayer made on the Form 709 filed in Year 3. To the extent Taxpayer's allocation exceed the amount necessary to obtain an inclusion ratio of zero with respect to Trust, under § 26.2632-1(b)(4)(i), such allocation is void.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: James F. Hogan
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy for section 6110 purposes
Copy of this letter